

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Westmoreland Corporation
Notice of Violation No. 1002
Violation

Case No. RC-10-276

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

July 28, 2010

Preliminary Statement

On June 15, 2010, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1002 to Dakota Westmoreland Corporation (DWC) for the deposition of sediment that was noted during an inspection of the Beulah Mine on May 27, 2010. The NOV was issued for failure to protect undisturbed areas adjacent to a haul road from the deposition of sediment and contamination by water transported sediment. A section of the berm along the main haul road had been removed to allow access to a sump located near the base of the haul road embankment near Brush Creek. The berm was not immediately replaced and a subsequent rainfall event caused runoff to flow down a ramp on the embankment causing sediment deposition on areas below the haul road embankment.

DWC completed the prescribed remedial measures within the abatement time as specified in the NOV. The NOV was terminated on July 19, 2010. DWC did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. DWC is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-1002 stated, and the Commission finds, that DWC violated NDAC Section 69-05.2-16-08(1)(a) and (d) for failure to properly maintain sediment control measures to minimize the deposition of sediment on undisturbed areas and NDAC Section 69-05.2-24-01(2)(a) and (c) for failure to maintain sediment control measures for controlling erosion and sedimentation from haul roads.
3. DWC completed the remedial actions specified in the notice of violation within the prescribed time.

4. DWC did not contest the notice of violation by requesting an informal conference or formal hearing in the matter.
5. The Commission terminated NOV-1002 on July 19, 2010.
6. NDAC Section 69-05.2-28-12 requires the Commission to consider four factors in determining the amount of civil penalty. These factors are: 1) history of previous violations; 2) seriousness of the violation; 3) negligence; and, 4) good faith in attempting to achieve rapid compliance.
7. The Commission finds that assessment of a civil penalty based on the history of previous violations at DWC's Beulah Mine is warranted. With this NOV, DWC has received five violations within the past three years. Although the previous violations were not all of the same nature as NOV-1002, five violations within a three-year time period constitutes a history of violations.
8. The Commission finds that DWC's violation did cause sedimentation on undisturbed and previously disturbed areas resulting in topsoil degradation. The violation was serious in that some environmental damage occurred. A penalty based on seriousness is warranted.
9. The Commission finds that DWC's violation was not due to reckless or willful conduct. Nonetheless, DWC failed to replace the section of berm that was removed to gain access to a sump. Without the berm in place, runoff from the haul road went over the edge of the road embankment causing the erosion of material on a ramp constructed on the road embankment. Sediment from this erosion was deposited on undisturbed areas near Brush Creek. The failure to replace the berm was due to lack of diligence and ordinary negligence. A penalty based on negligence due to lack of diligence and reasonable care is warranted.
10. The Commission finds that DWC's compliance was very prompt in that they began cleanup and reconstructed the berm upon discovery of the feature. A deduction for good faith is warranted.
11. Based on these facts, the Commission should assess a penalty of \$500 for history, \$250 for seriousness, \$750 for negligence, and a \$500 deduction for good faith, totaling \$1,000, for NOV-1002.

From the foregoing findings of fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over surface coal mining and reclamation operations conducted in North Dakota by DWC.

2. DWC violated the provisions of NDAC Sections 69-05.2-16-08(1)(a) and (d) and 69-05.2-24-01(2)(a) and (c).
3. The Commission should assess a civil penalty for NOV-1002.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. Notice of Violation No. 1002 is affirmed.
2. Dakota Westmoreland Corporation is assessed a total civil penalty of \$1,000 (\$500 for history, \$250 for seriousness, \$750 for negligence, and \$500 deduction for good faith) for the violation.
3. The proceeding is closed upon payment of the penalty.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner